

§ 19.11-6

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paid upon termination of the annuity is returned to the Fund. The termination of a surviving spouse annuity due to remarriage does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless elected following a marriage after retirement under circumstances described in § 19.10-3 or § 19.10-4.

(b) A surviving spouse or former spouse shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which entitled under this or any other retirement system for Government employees. (For this purpose, neither the Social Security system nor the military retirement system is considered a retirement system for Government employees.) This restriction does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless the survivor annuity was elected under circumstances described in § 19.10-3 or § 19.10-4.

(c) A child's annuity begins on the day after the participant dies, or if a child is not then qualified, on the first day of the month in which the child becomes eligible. A child's annuity shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(d) Regular and supplemental survivor annuities to a spouse or former spouse of an annuitant described in §§ 19.11-2, 19.11-3 and 19.10-6(b) are increased from their effective date by the cumulative percentage of cost-of-living increases the annuitant was receiving under section 826 of the Act at death. All annuities payable to survivors on the date a cost-of-living adjustment becomes effective are increased by that percentage except (1) the first increase to a surviving spouse of a participant who dies in service shall be pro rated and (2) additional survivor annuities under § 19.10-5 when the spousal agreement authorizing the annuity makes no provision for cost-of-living increases.

(e) The annuity of survivors becomes effective as specified in this section but

is not paid until the survivor submits Form JF-38, Application for Death Benefits, supported by such proof as may be required, for example, death, marriage, and/or divorce certificates. In the event that such is not submitted during an otherwise eligible beneficiary's lifetime, no annuity is due or payable to the beneficiary's estate.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.11-6 Death during active duty.

(a) *Annuity for surviving former spouse.* In the event a participant dies before separation from the Service and leaves a former spouse, such former spouse is entitled to a regular survivor annuity under § 19.11-2 computed as if the participant had retired on the date of death unless a court order or spousal agreement is on file in the Department waiving such entitlement or providing for some other computation, or unless the former spouse had been found missing and an election filed under the procedures of § 19.11-4 waiving a survivor benefit for that person. Any assumed service authorized to be used under paragraph (b) of this section in computing the annuity for a surviving spouse may not be counted as "years of marriage" when determining whether the previous spouse qualifies as a "former spouse" under the definition in § 19.2(k) or when computing the pro rata share under § 19.2(s). A former spouse is entitled to an additional survivor annuity under § 19.10-5 provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

(b) *Annuity for surviving spouse.* If a participant who has at least 19 months of civilian service credit toward retirement under the System, excluding extra service credited for unhealthful post duty in accordance with section 816 of the Act, dies before separation from the Service, and is survived by a spouse as defined in § 19.2(v) such survivor shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with § 19.10-1 less any annuity payable to a former spouse under paragraph a. If the participant had less than three years of creditable civilian service at the time of death, the survivor annuity is computed on

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the basis of the average salary for the entire period of such service. If, at time of death, the participant had less than 20 years of creditable service, the annuity shall be computed on the assumption that the participant has had 20 years of service, but such additional service credit shall in no case exceed the difference between the participant's age on the date of death and age 65. A spouse is entitled to an additional survivor annuity under § 19.10-5 provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

(c) *Annuity for a child or children.* If a participant described in paragraph (b) of this section is survived by a child or children, each surviving child is entitled to an annuity as described in § 19.11-7.

(d) *Annuity changes.* Annuities based on a death in service are subject to the provisions of § 19.11-5 governing commencement, adjustment, termination and resumption of annuities.

§ 19.11-7 Annuity payable to surviving child or children.

(a) If a participant who has at least 18 months of civilian service credit under the System dies in service, or if an annuitant who was a former participant dies, annuities are payable to a surviving child or children, as defined in § 19.2(e) as follows:

(1) *When survived by spouse and child or children.* If a principal is survived by a wife or husband and by a child or children, in addition to any other annuity, there shall be paid to or on behalf of each child an annuity equal to the smallest of:

(i) \$900

(ii) \$2,700 divided by the number of children—adjusted under paragraph (b).

(2) *When survived by a child or children but no spouse.* If the principal is not survived by a wife or husband, but by a child or children, each surviving child shall be paid an annuity equal to the smallest of:

(i) \$1,080

(ii) \$3,240 divided by the number of children—adjusted under paragraph (b) of this section.

(b) *Adjusted rates.* In order to reflect cost-of-living increases, the amounts referred to in paragraphs (a)(1) and (2)

are increased from the commencing date of the annuity to each child by the cumulative percentage of all cost-of-living increases that have occurred under 5 U.S.C. 8340 since October 31, 1969.

(c) *Recomputation of annuity for child or children.* If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

§ 19.11-8 Required elections between survivor benefits.

(a) *Bar against concurrent payment under this Act and Workers' Compensation Act.* Except as stated below, survivor annuities and survivors' compensation for work injuries under 5 U.S.C. 8102 are not payable concurrently if both are based on the death of the same employee. A survivor entitled to both must elect which of the two benefits he/she prefers. Should all eligible survivors of a deceased employee elect to receive the compensation benefit rather than the survivor annuity, their rights to the latter are terminated and, if the lump-sum credit has not been exhausted, a lump-sum payment will become due under § 19.13. The one exception to this rule occurs when a widow or widower is being paid the balance of a scheduled compensation award under 5 U.S.C. 8107 due the deceased employee. If so, the widow or widower may receive the survivor annuity and compensation award concurrently.

(b) *Election between survivor annuity and social security benefits.* Pursuant to 42 U.S.C. 417 (a) and (e), survivors who are eligible for annuity which is based in part on military service performed by a principal between September 16, 1940, and December 31, 1956, and also for survivor benefits under the Social Security system, may elect to have the military service credited toward the